

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

ANDREW L. COLBORN,

Plaintiff,

vs.

**NETFLIX, INC.; CHROME MEDIA LLC,
F/K/A SYNTHESIS FILMS, LLC;
LAURA RICCIARDI; AND MOIRA
DEMOS,**

Defendants.

Civil No.: 19-CV-484-BHL

**JOINT STATEMENT OF UNDISPUTED MATERIAL FACTS REGARDING
THE PRODUCER DEFENDANTS' MOTION TO DISMISS UNDER RULE 12(B)(5)**

In response to the Court's October 22, 2020 Minute Order (Dkt. 156), Plaintiff Andrew L. Colborn and Defendants Chrome Media, LLC f/k/a Synthesis Films, LLC; Laura Ricciardi; and Moira Demos (collectively, the "Producer Defendants"), through counsel, hereby jointly submit the following statement of agreed-upon material facts regarding the Producer Defendants' pending Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(5).¹

General Facts

1. The documentary *Making a Murderer* aired on Netflix on December 18, 2015. (E.g., Order Scheduling Evidentiary Hearing, Dkt. 113 at 3.)
2. Colborn filed his original Complaint on December 17, 2018. (Dkt. 1-2.)

¹ Both Colborn and the Producer Defendants will each submit separate additional statements of disputed material facts, as directed by the Court's Minute Order.

3. Colborn did not attempt to serve his original Complaint on any defendant before he filed his Amended Complaint. (Declaration of George Burnett (Dkt. 71) ¶¶ 2-3.)

4. Colborn filed his Amended Complaint on March 4, 2019. (Dkt. 1-2.)

5. Colborn served the Amended Summons and Amended Complaint on Netflix on March 5, 2019. (Dkt. 20.)

6. The 90-day service deadline imposed by Wis. Stat. § 801.02(1) expired no later than March 18, 2019. (*E.g.*, Order Scheduling Evidentiary Hearing, Dkt. 113 at 11.)

7. On April 3, 2019 Defendants removed this case to federal court.

8. Laura Ricciardi, Moira Demos and Chrome Media filed a Motion to Dismiss pursuant to Federal Rule of Procedure 12(b)(5) in this Court on May 10, 2019, within the deadline set by a stipulated order for an extension of time. (Dkt. 26, 34.)

Attempted Service of Summons and Complaint on Laura Ricciardi and Moira Demos

9. Laura Ricciardi and Moira Demos are the co-founders and co-owners of Defendant Chrome Media, LLC. During the relevant time period, they shared a residence in Los Angeles at 1946 N. Oxford Ave., Los Angeles, CA 90027. (Declaration of Laura Ricciardi (Dkt. 36) ¶¶ 2, 4; Declaration of Moira Demos (Dkt. 37) ¶¶ 2, 4.)

10. Ricciardi and Demos were traveling and were not at their home from before March 4 to March 19, 2019 (Demos) and from before March 4 to March 22, 2019 (Ricciardi). During that time, nobody was present at their home. (Declaration of Laura Ricciardi (Dkt. 36) ¶ 8; Declaration of Moira Demos (Dkt. 37) ¶ 8.)

11. Neither Ricciardi nor Demos was personally served the original or the amended Summons and Complaint on or before March 18, 2019. (Declaration of Laura Ricciardi (Dkt. 36) ¶ 6; Declaration of Moira Demos (Dkt. 37) ¶ 6.)

12. Colborn filed a Non Service Report for each of Moira Demos and Laura Ricciardi. Both of those Non Service Reports were executed by Carlos Caceres on April 10, 2019. (Non Service Report for Moira Demos (Dkt. 49); Non Service Report for Laura Ricciardi (Dkt. 50).)

13. After learning that efforts to serve Demos and Ricciardi at their residence were unsuccessful, counsel for the Plaintiff conducted research on the internet attempting to determine whether Ricciardi and Demos had any possible upcoming speaking appearances, where they might be filming any projects, and the status of Avery appellate proceedings that might be filmed by those Defendants, in order to determine where they might be located and served other than at their residence. (Declaration of April Rockstead Barker (Dkt. 74) ¶ 18.)

14. Colborn's counsel decided to attempt service by publication and filed a Publication Summons and an Amended Publication Summons. (Declaration of George Burnett (Dkt. 71) ¶¶ 6-8 & Ex. 1; Declaration of April Rockstead Barker (Dkt. 74) ¶ 7.)

15. Plaintiff's counsel arranged for publication of the Amended Publication Summons in the *Los Angeles Times*, which published the Amended Publication Summons on March 13, 2019, March 20, 2019, March 27, 2019, and April 3, 2019, as described in a Proof of Publication filed in this Court on April 10, 2019. (Proof of Publication, Dkt. 25.)

16. When Demos returned home on March 19, 2019, she discovered two large envelopes bearing Colborn's counsel's return address. One envelope was addressed to Demos and the other to Ricciardi. The envelopes contained copies of the original Summons and

Complaint, the Amended Summons and Amended Complaint, and the Publication Summons and Amended Publication Summons. (Declaration of Moira Demos (Dkt. 37) ¶ 9.)

Attempted Service of Summons and Complaint on Chrome Media, LLC

17. Chrome Media is a New York corporation registered to do business in California. (Declaration of Debra Bursik (Dkt. 92-2) Exs. 1–3.)

18. The address Chrome Media provided to the New York Department of State for it to forward process served on Chrome Media through that office is in care of Tal Benari at 15821 Ventura Blvd., Suite 500, Encino, California 91436. (Second Declaration of Tal Benari (Dkt. 88) ¶ 3; Second Declaration of Moira Demos (Dkt. 87) ¶ 5.)

19. R.C. Baral & Co. is the office address of the accounting firm where Benari is employed. That firm provides production accounting and tax services for Chrome Media. (Second Declaration of Tal Benari (Dkt. 88) ¶¶ 3-4; Declaration of Natalia Canaan (Dkt. 39) ¶ 2; Declaration of Danielle Rodriguez (Dkt. 40) ¶ 2; Declaration of Dominique Bianchi (Dkt. 41) ¶ 2.)

20. On September 26, 2016, Chrome Media filed a Statement of Information with the California Secretary of State that stated that Tal Benari was Chrome’s agent for service of process in California, that his address was 15821 Ventura Blvd, Ste. 500, Encino, CA 91436; that this same address was the principal office address of Chrome Media, and stating that the same address was the business address for the CEO of Chrome Media. (Declaration of Debra Bursik (Dkt. 92-2) ¶ 4 & Ex. 3; Second Declaration of Tal Benari (Dkt. 88) ¶ 3; Second Declaration of Moira Demos (Dkt. 87) ¶ 5.)

21. On October 10, 2017, Chrome Media filed a Statement of No Change with the California Secretary of State certifying that there had been no change in the information contained in the Statement of Information Chrome Media had filed on September 26, 2016. (Declaration of Debra Bursik (Dkt. 92-2) ¶ 3 & Ex. 2.)

22. A Business Search on the California Secretary of State's website reflects the information Chrome Media provided in its September 26, 2016 Statement of Information pursuant to California Corporations Code section 17702.09(a) and 17701.13(a)(3). (Declaration of Debra Bursik (Dkt. 92-2) Ex. 1.)

23. Tal Benari is listed with the California Secretary of State as the registered agent for service of process for Chrome Media LLC in California. (Declaration of Tal Benari (Dkt. 38) ¶ 2; Second Declaration of Tal Benari (Dkt. 88) ¶ 2; Declaration of Debra Bursik (Dkt. 92-2) Ex. 1.)

24. On March 6, 2019, an individual entered the waiting area of 15821 Ventura Blvd., Suite 500, Encino, CA carrying a packet of documents. That person asked the receptionist there at the time, Natalia Canaan, to see Benari. Benari was not in the office, and Canaan told the person that. The person left without identifying himself to Canaan and without leaving anything behind. (Declaration of Natalia Canaan (Dkt. 39) ¶¶ 4, 5.)

25. The reception area of 15821 Ventura Blvd., Suite 500 sits behind a counter in a waiting area that is open to the public. Two doors leading from the waiting area to the interior offices are kept closed. The receptionist's duties include answering phones, greeting visitors, and notifying office workers when guests arrive. (Declaration of Tal Benari (Dkt. 38) ¶¶ 14-16; Declaration of Natalia Canaan (Dkt. 39) ¶ 3; Declaration of Danielle Rodriguez (Dkt. 40) ¶ 3; Declaration of Dominique Bianchi (Dkt. 41) ¶ 3.)

26. One day in early March 2019 (Benari believes it was March 7 or March 8), one of the receptionists at the office at 15821 Ventura Blvd, Ste. 500, Encino, CA 91436 gave Benari a set of documents that she said had been left by a visitor at the reception desk. The documents appeared to be a summons and complaint, an amended summons and complaint, notices of electronic filing, and a set of interrogatories and requests for production in this case. (Declaration of Tal Benari (Dkt. 38) ¶ 17.)

27. On March 11, 2019 and again on March 12, 2019, Colborn's counsel arranged for the mailing of copies of the Summons and Complaint (along with electronic notices), the Amended Summons and Complaint (along with electronic notices), the Publication Summons, and the Amended Publication Summons to Chrome Media's agent for service of process, Tal Benari, at his business address. (Declaration of Debra Bursik (Dkt. 47).)

28. Colborn's counsel decided to attempt service by publication and filed a Publication Summons and an Amended Publication Summons. (Declaration of George Burnett (Dkt. 71) ¶¶ 6-8 & Ex. 1; Declaration of April Rockstead Barker (Dkt. 74) ¶ 7.)

29. Plaintiff's counsel arranged for publication of the Amended Publication Summons in the *Los Angeles Times*, which published the Amended Publication Summons on March 13, 2019, March 20, 2019, March 27, 2019, and April 3, 2019, as described in a Proof of Publication filed in this Court on April 10, 2019. (Proof of Publication, Dkt. 25.)

30. On March 13 or 14, 2019, Tal Benari received a package in the mail bearing Colborn's counsel's return address and a March 11, 2019 postmark. The package contained documents that appeared to be the same documents that had been left at reception in early March and on March 11 (i.e., a summons and complaint, an amended summons and complaint, notices of electronic filing, and a set of interrogatories and request for production in this case). The next

day (on March 14 or 15), Benari received another package in the mail bearing Colborn's counsel's return address and a March 12, 2019 postmark. The package contained documents that appeared to be the same documents contained in the envelope he received the day before.

(Declaration of Tal Benari (Dkt. 38) ¶ 21.)

31. On March 15, 2019, a man visited 15821 Ventura Blvd., Suite 500, Encino, CA. That man gave Canaan, who was at the reception desk, a business card to give to Benari and asked Canaan to have Benari call him. Canaan had previously seen this man while she was at the same reception desk on March 7 or March 8. The business card identified the man as Carlos A. Caceres. (Declaration of Natalia Canaan (Dkt. 39) ¶ 8.)

32. Colborn's counsel retained a second process service firm to attempt service on Demos, Ricciardi, and Chrome Media, and a person purportedly associated with that firm, Emilio Gonzales Zarate, submitted an affidavit purporting to recount an effort to personally serve Benari. Based on doubts about the information initially provided by that process service firm, Colborn's counsel has withdrawn any reliance on the Affidavit of Service provided by that firm. (Dkt. 21; Declaration of April Rockstead Barker (Dkt. 74) ¶¶ 15, 19; Colborn's Brief in Opposition to Chrome Media, Laura Ricciardi, and Moira Demos's Motion to Dismiss (Dkt. 52) at 20.)

33. Tal Benari was not personally served with the original or the amended Summons and Complaint on or before May 6, 2019. (Declaration of Tal Benari (Dkt. 38) ¶ 6.)

Dated: November 23, 2020

Respectfully submitted,

s/ April Rockstead Barker

April Rockstead Barker, SBN 1026163
SCHOTT, BUBLITZ & ENGEL, S.C.
640W. Moreland Blvd.
Suite 500
Waukesha, WI 53188-2433
T: (262) 827-1700
abarker@sbe-law.com

George Burnett, SBN 1005964
LAW FIRM OF CONWAY, OLEJNICZAK & JERRY,
S.C.
231 S. Adams Street
Green Bay, WI 54301
P.O. Box 23200
Green Bay, WI 54305-3200
P: (920) 437-0476
F: (920) 437-2868

Michael Griesbach, SBN 01012799
GRIESBACH LAW OFFICES, LLC
P.O. Box 2047
Manitowoc, WI 54221-2047
P: (920) 320-1358

Counsel for Plaintiff Andrew L. Colborn

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s/ James A. Friedman

James A. Friedman, SBN 1020756

GODFREY & KAHN, S.C.

One East Main Street

Suite 500

Madison, WI 53703-3300

T: (608) 284-2617

F: (608) 257-0609

jfriedman@gklaw.com

Kevin L. Vick, *Pro Hac Vice*

Jean-Paul Jassy, *Pro Hac Vice*

JASSY VICK CAROLAN LLP

800 Wilshire Boulevard, Suite 800

Los Angeles, CA 90017

T: (310) 870-7048

F: (310) 870-7010

kvick@jassyvick.com

*Counsel for Defendant Laura Ricciardi, Moira
Demos, and Chrome Media, LLC*